

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JIE YU, ET AL.,

Plaintiffs,

v.

SOUTHLAND TASTE  
RESTAURANT, INC., ET AL.,

Defendants.

Case No. C 07-02274 PVT

**ORDER DENYING STIPULATION TO  
DISMISS WITH PREJUDICE FOR  
FAILURE TO FILE A STATEMENT  
SUPPORTING THE FAIRNESS OF THE  
SETTLEMENT OR A STIPULATION OF  
DISMISSAL UNDER RULE 41(a)(1); AND  
ORDER TO SHOW CAUSE**

**[Docket No. 50]**

On September 18, 2008, the parties stipulated to dismiss with prejudice the above-captioned action. The Fair Labor Standards Act ("FSLA" or "Act") requires employers to pay their employees time and one-half for work exceeding forty hours per week. *See* 29 U.S.C. § 207(a)(1). An employee's claims under the FSLA is non-waivable, and thus may not be settled without supervision of either the Secretary of Labor or a district court. *Yue Zhou v. Wang's Restaurant*, 2007 WL 172308 at \*1(N.D. Cal. Jan. 17, 2007); *See also Lynn's Food Stores, Inc. v. United States, et al.*, 679 F. 2d 1350, 1352-53 (11th Cir. 1982); House Report No. 101-664.<sup>1</sup>

<sup>1</sup> As used herein, "House Report No. 101-664" refers to House Report No. 101-664, P.L. 101-433, Older Workers Benefit Protection Act, H.R. Rep. 101-664, H.R. Rep. No. 664, 101st Cong., 2nd Sess. 1990, 1990 WL 200383 (1990). This report reflects Congress' intent that FLSA claims may not be waived or compromised without supervision of

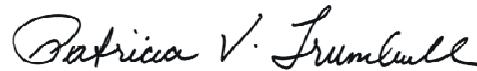
Under the FSLA, an award of reasonable fees is mandatory when a settlement of FLSA claims result in a judgment. *See* 29 U.S.C. § 216(b) ("the court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."). Rule 54(a) of the Federal Rules of Civil Procedure defines "Judgment" as "decree and any order from which an appeal lies." Thus, even without a document officially entitled "Judgment," the FSLA's mandatory attorney's fees provision is triggered anytime a settlement of FSLA claims results in a final appealable order of the court. Court determination of whether to award attorney's fees, and if so the amount thereof, is appropriate in connection with the court's review of the fairness of the settlement of FSLA claims.

Accordingly, IT IS HEREBY ORDERED that:

1. The Stipulation to Dismiss with Prejudice is denied for failure to file a statement supporting the fairness of the settlement or a stipulation of dismissal under Federal Rule of Civil Procedure 41(a)(1);<sup>2</sup> and
2. The parties are ordered to show cause on November 18, 2008 at 10AM why they failed to file a statement supporting the fairness of the settlement or a stipulation of dismissal under Federal Rule of Civil Procedure 41(a)(1).

IT IS SO ORDERED.<sup>3</sup>

Dated: *October 10, 2008*



PATRICIA V. TRUMBULL  
United States Magistrate Judge

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either the Secretary of Labor or a district court.

<sup>2</sup> Because a stipulation under Rule 41(a)(1) does not involve an order of the court, the provisions of 29 U.S.C. § 216(B) requiring attorney's fees is not applicable. The court expresses no opinion as to the enforceability of any settlement conducted without the approval of either the Secretary of Labor or a district court.

<sup>3</sup> The holding of this court is limited to the facts and particular circumstances underlying the present motion.

**United States District Court**  
For the Northern District of California

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